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11 Corp., BBVA Compass Financial
Corporation, and Compass Bank

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14

15 AMITABHO CHATTOPADHYAY, UNITE
16 THE PEOPLE, individually and on behalf of
all other similarly situated,

17
18 Plaintiffs,

19 v.

20 BBVA COMPASS BANCSHARES, INC.,
21 SIMPLE FINANCE TECHNOLOGY
22 CORP., BBVA COMPASS FINANCIAL
CORPORATION, and COMPASS BANK,

23 Defendants.
24
25
26
27
28

Case No. 3:19-cv-01541-JST

The Honorable Jon S. Tigar

**DEFENDANTS' NOTICE OF MOTION
AND MOTION TO DISMISS
COMPLAINT PURSUANT TO RULE
12(b)(2); MEMORANDUM OF POINTS
AND AUTHORITIES**

Complaint Filed: March 25, 2019

Date: August 1, 2019

Time: 2:00 p.m.

Place: Courtroom 9

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on August 1, 2019, at 2:00 p.m., or as soon thereafter as the matter may be heard, in the above-named court, located at 450 Golden Gate Avenue, Courtroom 9 – 19th Floor, San Francisco, California, 94102, the Honorable Jon S. Tigar presiding, defendants BBVA Compass Bancshares, Inc. and BBVA Compass Financial Corporation (the “BBVA Defendants”), will and hereby do move pursuant to Federal Rule of Civil Procedure 12(b)(2) for an order dismissing the Complaint. Defendants bring this Motion on the grounds that this Court lacks personal jurisdiction over the BBVA Defendants.

The BBVA Defendants respectfully request an order dismissing them from the action with prejudice for lack of personal jurisdiction.

This Notice of Motion and Motion are based on the Memorandum of Points and Authorities, the Declarations of Carrie Cogburn and Brian R. Herrick, the Court’s file, any argument of counsel the Court may entertain at the hearing on this motion, and all matters of which the Court may take judicial notice.

Respectfully submitted,

Dated: May 24, 2019

KATTEN MUCHIN ROSENMAN LLP

By: /s/ Gregory S. Korman

Attorneys for Defendants BBVA Compass
Bancshares, Inc., Simple Finance Technology
Corp., BBVA Compass Financial
Corporation, and Compass Bank

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants BBVA Compass Bancshares, Inc. (“BBVA Compass Bancshares”) and BBVA Compass Financial Corporation (“BBVA Compass Financial,” collectively, the “BBVA Defendants”) are not subject to personal jurisdiction in this Court. They are not at home in California, and the claims asserted do not arise out of anything the BBVA Defendants did in California.

Plaintiff Amitabho Chattopadhyay alleges she applied to open a deposit account with online banking platform Simple Finance Technology Corp. (“Simple”). She alleges Simple declined her application after she answered “no” to the application question “Are you a U.S. citizen?” She and her law firm, Unite the People (collectively, “Plaintiffs”), have sued Simple, Compass Bank, and the BBVA Defendants for alleged discrimination in violation of 42 U.S.C. § 1981 and the California Unruh Civil Rights Act (Cal. Civ. Code §§ 51 *et seq.*). Dismissal of the BBVA Defendants is necessary.

BBVA Compass Bancshares is a bank holding company incorporated in Texas with its principal place of business in Texas. It is not “at home” in California and thus not subject to general personal jurisdiction in this Court. BBVA Compass Bancshares is also not subject to specific personal jurisdiction because Plaintiffs’ bank-account-opening-discrimination claims do not arise from anything BBVA Compass Bancshares did at all, much less anything it purposefully aimed at California. BBVA Compass Bancshares is not a bank. It has no banking operations and provides no banking products or services in California, or anywhere else, and it does not communicate with California consumers. The Court should dismiss BBVA Compass Bancshares.

BBVA Compass Financial is a commercial equipment leasing entity incorporated in Texas with its principal place of business in Texas. It is at home in Texas, not California, and consequently it is not subject to general personal jurisdiction in this Court. Plaintiffs’ claims do not arise from anything BBVA Compass Financial did, much less purposefully aimed at California, because BBVA Compass Financial has no banking operations or deposit-taking

1 products or services, and commercial equipment leasing has nothing to do with opening an
 2 online-only deposit account. Thus, BBVA Compass Financial also is not subject to specific
 3 personal jurisdiction in this Court.

4 In short, the BBVA Defendants are foreign corporations with no connection, much less
 5 the requisite substantial one, to Plaintiffs' claims. The Court should dismiss the Complaint as
 6 to BBVA Compass Bancshares and BBVA Compass Financial for lack of personal
 7 jurisdiction.

8 **II. STATEMENT OF THE ISSUES TO BE DECIDED**

9 Should Plaintiffs' Complaint be dismissed as to the BBVA Defendants because this
 10 Court lacks personal jurisdiction over them?

11 **III. JURISDICTIONAL FACTS**

12 Defendant BBVA Compass Bancshares is a Texas corporation with its principal place
 13 of business in Texas. Compl. ¶ 5; Declaration of Brian R. Herrick ("Herrick Decl.") ¶ 2.
 14 Defendant BBVA Compass Financial is Texas corporation with its principal place of business
 15 in Texas. Declaration of Carrie Cogburn ("Cogburn Decl.") ¶ 2.¹ Neither BBVA Defendant is
 16 incorporated in California or has its principal place of business in California.

17 Plaintiffs allege the BBVA Defendants "do business in the State of California,"
 18 Compl. ¶ 11, that they "operate[] substantial business" in California, including both an
 19 "online presence and physical branches," *id.* at ¶¶ 5, 7, and that they "act[ed] in tandem" with
 20 Simple to "close[] all bank accounts belonging to non-citizens, including permanent residents,
 21 *id.* at ¶ 16, or "conspired with" Simple "to deny services to aliens in that it provided the web
 22 interface which automatically rejects non-citizen applicants on the basis of their immigration
 23 status," *id.* at ¶ 17.

24 In reality, BBVA Compass Bancshares is a financial holding company with no
 25 banking operations, banking products, or banking services in California or anywhere else.
 26 Herrick Decl. ¶ 3. BBVA Compass Bancshares is not involved in the day-to-day operations of
 27

28 ¹ Plaintiff erroneously alleges that BBVA Compass Financial is an Alabama corporation.
 Compl. at ¶ 7.

its subsidiaries, each of which is independently managed. *Id.* at ¶ 2. And BBVA Compass Bancshares does not communicate directly with consumers in California. *Id.* at ¶ 4. Similarly, BBVA Compass Financial is a commercial equipment leasing company that does not engage in retail banking. Cogburn Decl. ¶ 2. It is not a bank; it has no banking operations; and it provides no deposit-taking products or services, in California or anywhere else. *Id.* at ¶ 3.

IV. LEGAL STANDARD

To survive a motion to dismiss for lack of personal jurisdiction under Rule 12(b)(2), a plaintiff bears the burden of demonstrating that jurisdiction is appropriate and of making “a prima facie showing of jurisdictional facts.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (internal quotations and citation omitted). Jurisdictional facts cannot be established by nonspecific, conclusory statements. *Butcher’s Union Local No. 498, United Food & Commercial Workers v. SDC Inv., Inc.*, 788 F.2d 535, 540 (9th Cir. 1986).

V. THE COURT LACKS GENERAL PERSONAL JURISDICTION OVER THE BBVA DEFENDANTS BECAUSE THEY ARE AT HOME IN TEXAS, NOT CALIFORNIA

A federal district court lacks general personal jurisdiction over a foreign corporation unless its “affiliations with the [forum] State are so ‘continuous and systematic’ as to render [it] essentially at home in the forum state.” *Daimler AG v. Bauman*, 571 U.S. 117, 139 (2014) (citation omitted); *see also Schwarzenegger*, 374 F.3d at 807 (continuous and systematic general business contacts must “approximate physical presence” in California) (citation omitted); *Park v. Oxford Univ.*, 35 F. Supp. 2d 1165, 1167 (N.D. Cal. 1997) (“[T]he level of contact with the forum state necessary to establish jurisdiction is quite high.”) (citation omitted).

Barring an “exceptional” case, a foreign corporation is subject to general jurisdiction only in the state where it is incorporated or where it maintains its principal place of business. *Daimler AG*, 571 U.S. at 126–27, 137–38, n.19. Critically, “[g]eneral jurisdiction . . . calls for an appraisal of a corporation’s activities in their entirety, nationwide and worldwide. A

1 corporation that operates in many places can scarcely be deemed at home in all of them.” *Id.*
 2 at 139 n.20; *see also Martinez v. Aero Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014).

3 Neither of the BBVA Defendants is subject to general personal jurisdiction in
 4 California because neither is “at home” in this state. BBVA Compass Bancshares is not at
 5 home in California because it is a Texas corporation with its principal place of business in
 6 Texas. Herrick Decl. ¶ 2. The same is true for BBVA Compass Financial Corporation.
 7 Cogburn Decl. ¶ 2. It is a Texas corporation with its principal place of business in Texas.
 8 Both are “at home” in Texas, *not* California, and there is no basis to find this to be an
 9 exceptional case. *See, e.g., Bayer Healthcare LLC v. Nektar Therapeutics*, No. 17 CV-05055-
 10 LHK, 2018 WL 1258202, at *5 (N.D. Cal. Mar. 12, 2018) (holding allegations the defendants
 11 had “employees and a manufacturing facility in California, maintain[ed] a partnership with”
 12 California-based company, bought and sold products in California, but had Illinois principal
 13 place of business, were “not enough to support a finding” of general jurisdiction because
 14 “[m]erely conducting business in California from a home base in Illinois does not render a
 15 company ‘at home’ in California, even when such business generates substantial revenue”); *In*
 16 *re Packaged Seafood Prods. Antitrust Litig.*, 338 F. Supp. 3d 1118, 1139–42 (S.D. Cal. 2018)
 17 (holding general jurisdiction not established where defendants had principal places of
 18 business in the United Kingdom and the Cayman Islands, maintained offices in New York and
 19 Los Angeles, and where a designated member traveled to the United States to attend board of
 20 directors’ meetings, did not have operations “so substantial and of such a nature as to render”
 21 them at home in the United States) (citation omitted).

22 Under controlling Supreme Court authority, *Daimler AG*, 571 U.S. at 126–27, 137–38,
 23 n.19, there is no general personal jurisdiction over the BBVA Defendants.

VI. THE COURT LACKS SPECIFIC PERSONAL JURISDICTION OVER THE BBVA DEFENDANTS

Courts in the Ninth Circuit will “exercise specific jurisdiction over a non-resident defendant only when three requirements are satisfied: (1) the defendant either ‘purposefully direct[s]’ its activities or ‘purposefully avails’ itself of the benefits afforded by the forum’s laws; (2) the claim arises out of or relates to the defendant’s forum-related activities; and (3) the exercise of jurisdiction comports with fair play and substantial justice, i.e., it is reasonable.” *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1023 (9th Cir. 2017) (citations omitted).

Specific personal jurisdiction cannot be asserted over the BBVA Defendants because they did not aim any suit-related conduct at California, and Plaintiffs’ claims of discrimination in opening online accounts does not arise out of anything the BBVA Defendants did because neither defendant engages in banking activities in California (or anywhere else). Cogburn Decl. ¶ 3; Herrick Decl. ¶ 3.

A. The Court Lacks Specific Jurisdiction over Defendant BBVA Compass Bancshares Because It Directed No Case-Related Activity to California

“The purposeful availment requirement is designed to ensure that a defendant is not subjected to suit in a jurisdiction through random, fortuitous, or attenuated contacts.” *Am. Tel. & Tel. Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 590 (9th Cir. 1996). BBVA Compass Bancshares did not direct any suit-related conduct (or any conduct at all) at California. While Plaintiffs allege that BBVA Compass Bancshares has an “online presence and physical branches” in California, that it “act[ed] in tandem” with Simple to close all Simple accounts belonging to noncitizens, and that it “conspired” with Simple to deny Simple’s services to aliens, Compl. ¶¶ 5, 16–17, these are baseless conclusions without factual support.

The evidentiary record is that BBVA Compass Bancshares does not have branches and does not involve itself in the day-to-day operations of any of its independently managed subsidiaries. Instead, it is “a financial holding company,” it engages in no banking activities,

1 and has no communications with consumers in California. Herrick Decl. ¶¶ 2–4. As such,
 2 Plaintiffs’ claims in no way could have arisen from any case-related conduct BBVA Compass
 3 Bancshares purposefully directed to California, because there was none. *Watkins v. Autozone,*
 4 *Inc.*, No. 08-CV-1509-H (AJB), 2008 WL 11336729, at *2–3 (S.D. Cal. Oct. 10, 2008)
 5 (concluding plaintiff failed to meet test for specific jurisdiction where it offered no affidavits
 6 or argument contradicting defendant’s averments that it was “a holding company that merely
 7 own[ed] stock in its subsidiaries”); *see also Reddy v. Medquist, Inc.*, No. CV 10-1830-
 8 VBF(DTBx), 2010 WL 11595765, at *2 (C.D. Cal. Apr. 29, 2010) (plaintiff did not meet her
 9 burden of showing court had general or specific jurisdiction over defendant that was “a
 10 holding company with no California operations”).

11 Plaintiffs’ vague and conclusory allegations of conspiracy or concerted action with
 12 Simple are insufficient to establish specific jurisdiction. *Brown v. 140 NM LLC*, No. 17-cv-
 13 05782-JSW, 2019 WL 118425, at *8 (N.D. Cal. Jan. 7, 2019) (finding no specific jurisdiction
 14 based on plaintiff’s allegations that the defendants “were participating in the same conspiracy
 15 as the California defendants”). “Plaintiffs provide no allegations or evidence to support an
 16 assertion that” either BBVA Defendant “had any direct involvement in the [discriminatory]
 17 scheme alleged” in the Complaint “as would be required for a finding that [it] is subject to the
 18 specific jurisdiction of this Court.” *Corcoran v. CVS Health Corp.*, 169 F. Supp. 3d 970, 981
 19 (N.D. Cal. 2016); *Walden v. Fiore*, 571 U.S. 277, 283 (2014) (“[T]he relationship must arise
 20 out of contacts that the ‘defendant *himself*’ creates with the forum State.”) (citation omitted
 21 and emphasis in original); *Sky Billiards, Inc. v. Loong Star Inc.*, No. EDCV 14-00921 JGB
 22 (SPx), 2014 WL 12601022, at *4 (C.D. Cal. Sept. 4, 2014) (dismissing complaint where
 23 plaintiff’s “allegations regarding specific jurisdiction are threadbare”).

24 What is more, Plaintiffs’ allegations that the BBVA Defendants participated in
 25 Simple’s purported *nationwide* discriminatory policy do not support specific jurisdiction in
 26 *California*, because “it is not clear that those actions either took place in California or were
 27 purposefully directed at California.” *Page v. Minn. Life Ins. Co.*, No. SACV 18-01208 AG
 28 (KESx), 2018 WL 7501580, at *3 (C.D. Cal. Dec. 3, 2018) (granting motion to dismiss for

1 lack of jurisdiction where plaintiffs did not plausibly allege conspiracy between defendants);
 2 *Ayunan v. Caktiong*, Case No. 15-cv-9355, 2016 WL 738288, at *7 (C.D. Cal. Feb. 23, 2016)
 3 (finding specific personal jurisdiction lacking where foreign defendant had offices and an
 4 employee in California, was registered to do business in California, because plaintiffs failed
 5 to allege the claims arose from California-related activities).

6 Certainly no plausible inference may be drawn that California was the target of this
 7 policy, as Simple is an Oregon-based company, and the BBVA Defendants are Texas-based.
 8 Absent a showing that the alleged policy was aimed at California, rather than Texas, or
 9 Oregon, or anywhere else, specific jurisdiction is lacking. *See, e.g., Schwarzenegger*, 374
 10 F.3d at 804–05 (holding “a foreign act with foreseeable effects in the forum state” is
 11 insufficient for an assertion of specific personal jurisdiction) (citation omitted); *see also King*
 12 *v. Am. Family Mut. Ins. Co.*, 632 F.3d 570, 580 (9th Cir. 2011) (“[E]ven though the accident
 13 triggering [insurance] coverage under a nationwide insurance policy took place in Montana,
 14 there was no basis for finding of jurisdiction [there].”).

15 Plaintiffs’ conclusory allegations do not support specific personal jurisdiction. This
 16 Court should dismiss BBVA Compass Bancshares and all claims asserted against it.

17 **B. The Court Lacks Specific Jurisdiction over Defendant BBVA Compass**
 18 **Financial Because It Directed No Case-Related Activity to California**

19 Like BBVA Compass Bancshares, defendant BBVA Compass Financial did not direct
 20 any suit-related conduct toward California. Putting aside Plaintiffs’ baseless allegations about
 21 BBVA Compass Financial’s physical branches in California and tandem operations with
 22 Simple, the reality is that BBVA Compass Financial is “an equipment leasing company with
 23 its business focus on commercial transactions.” Cogburn Decl. ¶ 2. It is not a bank, has no
 24 banking operations, and provides no deposit-taking products or services in California or
 25 anywhere else. *Id.* at ¶ 3. BBVA Compass Financial’s commercial equipment leasing business
 26 has “no relationship to the complaint in the present action,” which is based solely on the
 27 allegedly discriminatory denial or termination of bank accounts. *AM Trust v. UBS AG*, 78 F.
 28 Supp. 3d 977, 983–86 (N.D. Cal. 2015).

1 As with BBVA Compass Bancshares, the barebones conclusions that a commercial
 2 equipment leasing company worked “in tandem” with Simple, a digital account platform, are
 3 wholly insufficient. *See, e.g., Brown*, 2019 WL 118425, at *8 (“barebones assertions” of
 4 forum contacts insufficient); *Sky Billiards, Inc.*, 2014 WL 12601022, at *4 (“threadbare”
 5 allegations insufficient). And even if they were credited, there still could be no specific
 6 personal jurisdiction because Plaintiffs cannot allege the concerted action took place in
 7 California or was purposefully directed at California. *See Page*, 2018 WL 7501580, at *3. The
 8 claims against BBVA Financial Corporation should also be dismissed.

9 **C. Asserting Specific Personal Jurisdiction over the BBVA Defendants Would**
 10 **Be Constitutionally Unreasonable**

11 Neither BBVA Compass Bancshares nor BBVA Compass Financial is incorporated in
 12 California. Neither has its principal place of business here. Neither conducts any banking or
 13 deposit-taking activities here (or anywhere). Both are Texas companies incorporated in
 14 Texas with no consumer-facing operations. They have no ties to this case and no expectation
 15 that they would or could be sued by someone who tried to open an online account through
 16 Simple. It offends due process to demand they appear, produce witnesses, and produce
 17 documents in this Court. Respectfully, dismissal of the claims against the BBVA Defendants
 18 is warranted.

19 **VII. CONCLUSION**

20 For the foregoing reasons, this Court lacks jurisdiction over the BBVA Defendants.
 21 Thus, the claims against them should be dismissed with prejudice and judgment entered in
 22 favor of the BBVA Defendants.

23 Dated: May 24, 2019

KATTEN MUCHIN ROSENMAN LLP

25 By: /s/ Gregory S. Korman

26 Attorneys for Defendants BBVA Compass
 27 Bancshares, Inc., Simple Finance Technology
 28 Corp., BBVA Compass Financial
 Corporation, and Compass Bank